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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 MARIO CANODY,

11 Petitioner,

No. CIV S-04-1168 FCD KJM P

12 vs.

13 SCOTT KERNAN, Warden,

14 Respondent.

ORDER

15 _____/
16 Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of
17 this court's September 9, 2005 dismissal of his application for a writ of habeas corpus as
18 duplicative. Before petitioner can appeal this decision, a certificate of appealability must issue.
19 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

20 A certificate of appealability may issue under 28 U.S.C. § 2253 “only if the
21 applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C.
22 § 2253(c)(2). The court must either issue a certificate of appealability indicating which issues
23 satisfy the required showing or must state the reasons why such a certificate should not issue.
24 Fed. R. App. P. 22(b).

25 Where, as here, the petition was dismissed on procedural grounds, a certificate of
26 appealability “should issue if the prisoner can show: (1) ‘that jurists of reason would find it

debatable whether the district court was correct in its procedural ruling’; and (2) ‘that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right.’” Morris v. Woodford, 229 F.3d 775, 780 (9th Cir. 2000) (quoting Slack v. McDaniel, 529 U.S. 473, 120 S.Ct. 1595, 1604 (2000)).

After careful review of the entire record herein, this court finds that petitioner has not satisfied the first requirement for issuance of a certificate of appealability in this case. Specifically, there is no showing that jurists of reason would find it debatable whether petitioner had filed a duplicative petition. Accordingly, a certificate of appealability should not issue in this action.

IT IS SO ORDERED.

DATED:September 22, 2005

/s/ Frank C. Damrell Jr.
FRANK C. DAMRELL JR.
United States District Judge